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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA,	)	Case Nos.	CR 15-00246 EMC
	)		CR 13-00566 EMC
15 Plaintiff,)		
	)	UNITED STATES' SENTENCING	
16 v.	)	MEMORANDUM	
)		
17 RYAN CARROLL and	)	Sentencing Date:	November 18, 2015
18 ROBERT LEE,	)	Time:	2:30 p.m.
	)	Judge:	Hon. Edward M. Chen
19 Defendants.)		

I. INTRODUCTION

The defendants, Ryan Carroll and Robert Lee, stand before the Court to be sentenced following their guilty pleas. Defendant Ryan Carroll pled guilty to Count Three of the Indictment in Case No. CR 13-00566 EMC, which charged him the use of a firearm in furtherance of a crime of violence causing murder in violation of 18 U.S.C. § 924(j). Defendant Robert Lee pled guilty to Count Seven of the Indictment in Case No. CR 13-00566 EMC, which charged him with being an accessory after the fact in violation of 18 U.S.C. §§ 3 and 924(j) (use of a firearm use in furtherance of a crime of violence causing murder), and Count Two of the Indictment in Case No. CR 15-00246 EMC, which charged him with the malicious destruction of a vehicle by means of fire in violation of 18 U.S.C. § 844(i).

Both defendants pled guilty after entering into plea agreements with the government, pursuant to Rule 11(c)(1)(C) and Rule 11(c)(1)(A) of the Federal Rules of Criminal Procedure, in which the government and each defendant agreed that specific sentences would be reasonable and appropriate under the Sentencing Guidelines and 18 U.S.C. § 3553(a). In the case of Ryan Carroll, the parties agreed that – in light of his agreement to enter into a guilty plea as part of a global disposition – a reasonable and appropriate sentence and disposition of the case would be: (i) a total sentence of imprisonment of 180 months; (ii) a term of 5 years’ supervised release; (iii) a fine to be determined by the court; (iv) restitution; and (v) a mandatory special assessment of \$100 for each count of conviction. In the case of Robert Lee, the parties similarly agreed that – in light of his agreement to enter into a guilty plea as part of a global disposition – a reasonable and appropriate sentence and disposition of the case would be: (i) a total sentence of imprisonment of 84 months; (ii) a term of 5 years’ supervised release; (iii) a fine to be determined by the court; (iv) restitution; and (v) a mandatory special assessment of \$100 for each count of conviction.

The government submits the following sentencing memorandum to advise the Court of its position with regard to the final presentence report (“PSR”) for each defendant and its sentencing recommendation.

II. DISCUSSION

A. Applicable Law

Section 3553(a) directs courts to consider a number of factors in determining an appropriate

1 sentence. In this case, these factors indicate that a sentences outlined in is sufficient, but not greater than
 2 necessary, to achieve the goals of sentencing. *See United States v. Carty*, 520 F.3d 984, 991 (9th Cir.
 3 2008). The key factors are the nature and circumstances of the offense and the history and
 4 characteristics of the defendant, 18 U.S.C. § 3553(a)(1), the need to afford adequate deterrence to
 5 criminal conduct, *id.* § 3553(a)(2)(B), and the need to protect the public from further crimes of the
 6 defendant *id.* § 3553(a)(2)(C).

7 Although the Supreme Court’s decision in *Booker* has rendered the Sentencing Guidelines
 8 advisory, the Guidelines still remain the “starting point and initial bench-mark” for sentencing.
 9 *Kimbrough v. United States*, 552 U.S. 85, 108, (2007) (internal quotation marks and citation omitted);
 10 *see Carty*, 520 F.3d at 991 (en banc); *United States v. Ellis*, 641 F.3d 411, 415 (9th Cir. 2011). While
 11 there is no presumption of reasonableness for a Guidelines range sentence, if a district judge “decides
 12 that an outside-Guidelines sentence is warranted, he must consider the extent of the deviation and ensure
 13 that the justification is sufficiently compelling to support the degree of the variance.” *Carty*, 520 F.3d at
 14 991-992 (citing *Gall v. United States*, 552 U.S. 38, 50, (2007)); *see also United States v. Munoz-*
 15 *Camarena*, 631 F.3d 1028, 1030 (9th Cir. 2011) (“district court must start with the recommended
 16 Guidelines sentence, adjust upward or downward from that point, and justify the extent of the departure
 17 from the Guidelines sentence.”). As the Supreme Court recognized in *Gall*, “a major departure should
 18 be supported by a more significant justification than a minor one.” 552 U.S. at 50. Finally, “[a]s a
 19 general rule, the preponderance of the evidence standard is the appropriate standard for factual findings
 20 used for sentencing.” *United States v. Armstead*, 552 F.3d 769, 777-78 (9th Cir. 2008); *see, e.g., United*
 21 *States v. Treadwell*, 593 F.3d 990, 1001 (9th Cir. 2010).

22 **B. Sentencing the Defendants to the Agreed Upon Sentences Would Vindicate the**
 23 **Interests Set Forth in 18 U.S.C. § 3553(a).**

24 The government agrees with the calculations and recommendation set forth in PSR for each
 25 defendant. After final PSR’s were prepared, however, counsel for defendant Ryan Carroll notified the
 26 government by email on October 20, 2015, that Mr. Carroll had received an “inheritance” in the amount
 27 of \$39,215.00. The government therefore requests that the PSR for Mr. Carroll be amended to reflect
 28 this fact and that the Court take these funds into consideration when evaluating Mr. Carroll’s ability to

1 pay a fine or restitution.

2 With this amendment to Mr. Carroll's PSR in mind, the government notes that the parties and
 3 U.S. Probation all agree that the appropriate sentences in this case are contained in the plea agreements.
 4 As set forth in each PSR, the sentences contained in the plea agreements would be sufficient, but not
 5 greater than necessary, to achieve the goals of sentencing under 18 U.S.C. § 3553(a). Regarding
 6 restitution, as also set forth in the plea agreements, the government believes that restitution is
 7 appropriate (and mandatory) under 18 U.S.C. § 3663A for each defendant, but defers to the Court as to
 8 the total amount to be determined.

9 **III. CONCLUSION**

10 In full consideration of the defendants' history and characteristics together with the goals of
 11 sentencing, the government respectfully requests that the Court sentence the defendants as follows:

12 Ryan Carroll: (i) a total sentence of imprisonment of 180 months;

13 (ii) a term of 5 years' supervised release;

14 (iii) a fine to be determined by the Court;

15 (iv) restitution to be determined by the Court; and

16 (v) a mandatory special assessment of \$100 for each count of conviction.

17
 18 Robert Lee: (i) a total sentence of imprisonment of 84 months;

19 (ii) a term of 5 years' supervised release;

20 (iii) a fine to be determined by the Court;

21 (iv) restitution to be determined by the Court; and

22 (v) a mandatory special assessment of \$100 for each count of conviction.

23
 24 DATED: November 11, 2015

Respectfully submitted,

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 26 Acting United States Attorney

27 By: /s/
 28 SCOTT D. JOINER
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